

Title	<p>Juvenile Law: Order Limiting Parents' Right to Make Educational Decisions for the Child and Recommendation for Surrogate Parent Appointment (approve forms JV-535)</p> <p>Local Education Agency Response to JV-535—Appointment of Surrogate Parent (approve form JV-536)</p>
Summary	<p>Proposed optional form JV-535 would implement statutory and rule requirements permitting the juvenile court to specifically limit right of parents or guardians to make educational decisions for children under juvenile court jurisdiction. It would also serve as a recommendation form to local education agencies (LEAs) for surrogate parent appointment. Proposed optional form JV-536 serves as a response form for the LEA to return to the court upon the appointment of a surrogate parent.</p>
Source	<p>Family and Juvenile Law Advisory Committee</p>
Staff	<p>Beth Kassiola, 415-865-7697</p>
Discussion	<p>The proposed form JV-535 would serve to implement section 24(h)(5) of the Standards of Judicial Administration relating to the education of children under juvenile court jurisdiction. Under Welfare and Institutions Code sections 361(a) and 726, the juvenile court may make appropriate orders limiting a parent or guardian's right to make educational decisions for the child, when the parent or guardian cannot be located or identified or when the parent or guardian is unwilling or unable to be an active participant in ensuring that the child's educational needs are met. In addition, rules 1456(c)(3) and 1493(d)(5) of the California Rules of Court require the court to consider the educational needs of the child.</p> <p>When the juvenile court has ordered the specific limitation of parental educational rights, the responsible local education agency (LEA) must then appoint a surrogate parent. Under Government Code section 7579.5(c), the LEA shall select, as a first preference, a relative caretaker, foster parent, or Court Appointed Special Advocate (CASA), if any of these individuals is willing and able to serve as a surrogate parent. Proposed form JV-535 includes a section for the judicial officer and court personnel to recommend a surrogate who is willing and able to serve, along with his or her contact information, thereby assisting school districts in selecting statutorily preferred surrogates.</p> <p>Proposed form JV-536 would serve as response form for the LEA to</p>

complete and return upon making an appointment of a surrogate parent.

Attachment

- This form must be sent to the LEA with form JV-536 *Local Education Agency Response to JV-535–Appointment of Surrogate Parent*.

Form Approved for Optional Use
Judicial Council of California
JV-535 [New January 1, 2002]

ORDER LIMITING PARENTS' RIGHT TO MAKE EDUCATIONAL DECISIONS FOR THE CHILD AND RECOMMENDATION FOR SURROGATE PARENT APPOINTMENT—JUVENILE

CHILD'S ATTORNEY <i>(Name and Address)</i> : TELEPHONE NO. <i>(Optional)</i> : E-MAIL ADDRESS <i>(Optional)</i> : CHILD'S NAME:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
LOCAL EDUCATION AGENCY RESPONSE TO JV-535-APPOINTMENT OF SURROGATE PARENT	CASE NUMBER:

This form is to be returned to the court at the address listed above, upon the appointment of a surrogate parent for the child.

1. Child's name:
2. Child's School:
3. Child's School Address:
4. School personnel contact *(name, title, and telephone no.)*:
5.
 - a. Appointed surrogate parent's name:
 - b. Appointed surrogate parent's address:
 - c. Appointed surrogate parent's telephone no.:
 - d. Appointed surrogate parent's relationship to the child:

Date:

.....
(TYPE OR PRINT NAME)

(SIGNATURE)

(TITLE)

2001 California Rules of Court—Judicial Standards of Administration
section 24

Sec. 24. Juvenile Court Matters

* * *

(h) [Role of the juvenile court] The juvenile court should:

(5) Make appropriate orders limiting the educational rights of a parent or guardian who cannot be located or identified, or who is unwilling or unable to be an active participant in ensuring that the child's special educational needs are met, and request that the local education agency appoint a surrogate parent for such child. (Gov. Code, § 7579.5.)

* * *

WELFARE AND INSTITUTIONS CODE
DIVISION 2. CHILDREN
PART 1. DELINQUENTS AND WARDS OF THE JUVENILE COURT
CHAPTER 2. JUVENILE COURT LAW
ARTICLE 10. DEPENDENT CHILDREN--JUDGMENTS AND ORDERS

§ 361. Limitations on parental control; relinquishment of child; grounds for removal of child; placement; findings

(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

WELFARE AND INSTITUTIONS CODE
DIVISION 2. CHILDREN
PART 1. DELINQUENTS AND WARDS OF THE JUVENILE COURT
CHAPTER 2. JUVENILE COURT LAW
ARTICLE 18. WARDS--JUDGMENTS AND ORDERS

§ 726. Parental or guardian control; limitations; removal from physical custody; findings and order; maximum period of physical confinement; jurisdiction

In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations, but no ward or dependent child

shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

- (a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.
- (b) That the minor has been tried on probation in such custody and has failed to reform.
- (c) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

In any case in which the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and pursuant to Section 11370.2 of the Health and Safety Code.

If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

"Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority. Nothing in this section shall be construed to limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

GOVERNMENT CODE
DIVISION 7. MISCELLANEOUS
CHAPTER 26.5. INTERAGENCY RESPONSIBILITIES FOR PROVIDING
SERVICES TO
HANDICAPPED CHILDREN

§ 7579.5. Surrogate parent; appointment; qualifications; liability

- (a) A surrogate parent shall not be appointed for a child who is a dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make educational decisions for the child. A surrogate parent shall not be appointed for a child who has reached the age of majority unless the child has been declared incompetent by a court of law.
- (b) A local educational agency shall appoint a surrogate parent for a child under one or more of the following circumstances:
 - (1) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to a local educational agency for special education and related services, or in cases where the child already has a valid individualized education program.
 - (2) No parent for the child can be identified.
 - (3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.
- (c) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent.
- (d) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate

public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The surrogate parent may sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, shall not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

(g) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. The surrogate parent shall not be an employee of a public or private agency that is involved in the education or care of the child. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the local educational agency shall terminate the appointment and appoint another surrogate parent.

(h) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(i) Nothing in this section shall be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(j) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-890 of the annual Budget Act.